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No. 02-132

In The
Supreme Court of the United States

MOBIL CORPORATION AND
HONEYWELL INTERNATIONAL, INC.,

Petitioners,

v.

BRUCE W. ADKINS, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Appeals Of West Virginia

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF THE UNOFFICIAL COMMITTEE OF SELECT ASBESTOS CLAIMANTS IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

The Unofficial Committee of Select Asbestos Claimants ("SAC") respectfully moves for leave to file the attached brief amicus curiae in this case. Consent of the petitioners has been obtained. Counsel for respondents has refused consent. Letters reflecting petitioners' consent and respondent's refusal are on file with the Clerk.

The SAC is a group of law firms representing cancer victims who are plaintiffs in asbestos litigation. The SAC is directed by a steering committee consisting of the undersigned firms and others. They are adverse to many of the petitioners in their own tort suits which are pending in courts around the country. They share the petitioners' belief, however, that there is an asbestos litigation crisis, and that this case presents a critical opportunity for this Court to restore some minimal, threshold balance and fairness to the asbestos litigation system.

Inasmuch as the cancer claimants are vigorously opposed to petitioners on the merits of their asbestos cases, yet are in profound agreement on the need for asbestos litigation reform, the Court would benefit from the SAC's perspective in this case. We respectfully submit that it would be of substantial help to the Court to have the views of the relatively small number of claimants who truly suffer from a debilitating asbestos-related disease, or are the survivors of those who have died of an asbestos-related cancer. Such claimants are gravely prejudiced by the operation of the present system, and proceedings such as the West Virginia mass consolidation are engines of that system.

The SAC thus respectfully requests leave to file the brief amicus curiae which follows below.

Respectfully submitted,

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TABLE OF CONTENTS

Page

INTEREST OF THE AMICUS CURIAE 1

SUMMARY OF ARGUMENT..... 4

ARGUMENT 4

CONCLUSION 8

APPENDIX .....App. 1

TABLE OF AUTHORITIES

Page

CASES:

Amchem Prods., Inc. v. Windsor, 521 U.S. 591 (1997) 5

In re Asbestos Prods. Liab. Litig. (No. VI), 1996 WL 539589 (E.D. Pa. Sept. 12, 1996) 5

In re Collins, 233 F.3d 809 (3d Cir.), cert. denied sub nom. *In re Collins v. Mac-Millan Bloedel, Inc.*, 532 U.S. 1066 (2001) 5

In re Federal-Mogul Global, Inc., ___ F.3d ___, 2002 WL 1763923 (3d Cir. July 31, 2002) 1, 2

In re Fibreboard Corp., 893 F.2d 706 (5th Cir. 1990) 7

In re Patenaude, 210 F.3d 135 (3d Cir.), cert. denied, 531 U.S. 1011 (2000) 2

Georgine v. Amchem Prods., Inc., 83 F.3d 610 (3d Cir.), aff'd, 521 U.S. 591 (1997) 2

OTHER AUTHORITIES:

The Fairness in Asbestos Compensation Act of 1999: Legislative Hearing on H.R. 1283, Before the House Committee on the Judiciary, 106th Cong. at 5 (July 1, 1999) (statement of Christopher Edley, Jr., Professor, Harvard Law School) 5

Edley & Weiler, *Asbestos: A Multi-Billion Dollar Crisis*, 30 Harv. J. Legis. 383, 384, 393 (1993) 5

BRIEF OF AMICUS CURIAE UNOFFICIAL COMMITTEE OF SELECT ASBESTOS CLAIMANTS IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

INTEREST OF THE AMICUS CURIAE

The Unofficial Committee of Select Asbestos Claimants ("SAC") consists of law firms that represent asbestos claimants who have a documented cancer diagnosis, or who are the survivors of persons who died of asbestos-related cancer.[1] The SAC is directed by a steering committee composed of the undersigned law firms and others, and includes many other firms as well. The SAC represents these claimants' interests in federal and state court proceedings. The Committee also actively participates in the bankruptcy cases of numerous asbestos companies, including the five cases recently consolidated in the United States Bankruptcy Court for the District of Delaware, see *In re Federal-Mogul Global, Inc.*, ___ F.3d ___, 2002 WL 1763923, *2 (3d Cir. July 31, 2002), as well as the reorganizations of Pittsburgh Corning Corp., case no. 00-22876 (Bankr. W.D. Pa); GAF Corp. (G-I Holdings, Inc., and related filings), case no. 01-30135 (Bankr. D.N.J.); and Babcock & Wilcox Co., case no. 00-0558 (Bankr. E.D. La.).

The SAC estimates that cancer claimants comprise fewer than ten percent of the total number of asbestos claims pending in this country. Although the SAC does not know what percentage of the plaintiffs in the West Virginia

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[1] Pursuant to Rule 37.6, the SAC states that no counsel for any petitioner or respondent authored this brief in whole or in part, and no person or entity other than the undersigned SAC counsel made any monetary contribution to the preparation or submission of the brief.

consolidation are cancer claimants, it is also likely to be less than ten percent.

Cancer claimants are not the type of unimpaired claimant whose numbers are said to be inexplicably proliferating, and whom petitioners assert are responsible for the recent bankruptcy filings and overall asbestos litigation crisis. In fact, cancer cases have remained steady over the last few years and will eventually disappear without causing a single additional bankruptcy.

The physical and emotional harms suffered by cancer claimants are indisputable and profound. The signature asbestos-related cancer, mesothelioma, is an "invariably fatal cancer . . . for which asbestos exposure is the only known cause . . . [,]" *In re Patenaude*, 210 F.3d 135, 138 (3d Cir.), cert. denied, 531 U.S. 1011 (2000), and which kills its victims "generally within two years of diagnosis[,]" during which "[m]esothelioma victims invariably suffer great pain and disability." *Georgine v. Amchem Prods., Inc.*, 83 F.3d 610, 633 (3d Cir.), aff'd, 521 U.S. 591 (1997).

The SAC is opposed to the petitioners on the merits of the claims, and we dispute vigorously many of the factual assertions in their briefs. For instance, while petitioner Mobil Corp. protests that "[t]here is no scientific evidence that Mobil's products can cause asbestos-related diseases[,]" petition at 18 (emphasis petitioner's), this assertion is unsupported and is, of course, a matter for juries to determine. Similarly, the automakers assert that there is no evidence that asbestos exposure during brake work causes disease. See Memorandum of DaimlerChrysler Corp., Ford Motor Co. and General Motors Corp. in Support of Petition for Certiorari at 8-9. This is assuredly not so, as the Third Circuit noted a few weeks ago. See *In re*

Federal-Mogul Global, Inc., supra, 2002 WL 1763923, at *17 ("The arguments of [the automakers] are based on their optimistic view that a *Daubert* hearing would lead to the rejection of the causation claims of all Plaintiffs. However, the evidence creates an issue that could well go either way as to whether Plaintiffs satisfy the *Daubert* gatekeeping standard.").

The SAC likewise does not join in many of the complaints about the West Virginia courts' approach to tort litigation in general, or to mass tort litigation in particular. For instance, we do not agree that the application of West Virginia law to the consolidated cases is necessarily wrong, and we certainly do not join in the argument that such a choice of law is an error of constitutional dimension.

While we are adversaries, however, we share petitioners' conviction that the asbestos litigation system is fundamentally broken. As petitioners demonstrate, the present system has resulted in an unprecedented wave of corporate bankruptcies. As a practical matter, this leaves many of the truly injured asbestos claimants with little or no opportunity for fair compensation. In some cases claimants are left with no compensation at all. The flood of meritless cases effectively leaves the genuine claimants without a remedy at all, or with a plainly insufficient and unjust remedy.

Mass consolidations such as this effectively make viable thousands of claims brought by unimpaired persons. The lack of any meaningful opportunity to discover the facts or defend the merits of these cases, combined with the irresistible settlement pressure generated by the format of the proceeding, enables unimpaired claims to

escape scrutiny and be paid. Without opportunities for such mass, forced processing of bogus claims, many of them would be defeated, thus preserving resources for the truly injured victims.

The SAC's clients are thus victims of the present system, the ills of which are embodied in the extreme in the West Virginia consolidation. These cancer claimants have a profound interest in the Court's acceptance and treatment of this case.

SUMMARY OF ARGUMENT

Mass consolidated proceedings, like the one in this case, force defendants to settle thousands of meritless claims. Such consolidations thus invite the filing of many thousands more such claims, resulting in wave after wave of corporate bankruptcies. This in turn leaves genuinely sick claimants uncompensated.

The SAC, representing those with asbestos-related cancer or their survivors, urges the Court to grant certiorari in this case. It presents an opportunity to set minimal constitutional standards for large aggregative proceedings of this type. Such standards are a matter of fundamental fairness not only to defendants, but also to the truly ill and their survivors, whose rights are effectively compromised by such consolidations.

ARGUMENT

As petitioners illustrate, the vast majority of present asbestos claimants are unimpaired – "people who have

been exposed to asbestos, and who (usually) have some marker of exposure such as changes in the pleural membrane covering the lungs, but who are not impaired by an asbestos-related disease and likely never will be." *The Fairness in Asbestos Compensation Act of 1999: Legislative Hearing on H.R. 1283*, before the House Committee on the Judiciary, 106th Cong. at 5 (July 1, 1999) (statement of Professor Christopher Edley, Jr., Harvard Law School). In *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997), Justice Breyer observed that "up to one half of asbestos claims are now filed by people who have little or no physical impairment." *Id.* at 692, quoting Edley & Weiler, *Asbestos: A Multi-Billion Dollar Crisis*, 30 Harv. J. Legis. 383, 384, 393 (1993). SAC members, with long experience in asbestos litigation, know that the figure today is much closer to 90%.

The SAC's clients are terribly prejudiced by these claims, for they use up the resources that should go to "the sick and the dying, their widows and survivors." *In re Collins*, 233 F.3d 809, 812 (3d Cir.), cert. denied sub nom. *Collins v. Mac-Millan Bloedel, Inc.*, 532 U.S. 1066 (2001) (internal citation omitted); see also Edley & Weiler, supra, at 393. Judge Weiner, who oversees the federal asbestos MDL proceedings, has stated that "[o]nly a very small percentage of the cases filed have serious asbestos-related afflictions," but they "are prone to be lost in the shuffle with pleural and other non-malignant cases." *In re Asbestos Prods. Liab. Litig. (No. VI)*, 1996 WL 539589, *1 (E.D. Pa. Sept. 12, 1996).

Virtually all of the companies recently to have filed for bankruptcy protection because of asbestos liabilities have blamed the filing on the avalanche of unimpaired claims. The first-day "informational brief" of Federal-Mogul Global,

Inc. in the United States Bankruptcy Court for the District of Delaware is typical:

> "By 1992, 60-70% of new claims were being filed by individuals who had a "marker" of asbestos exposure, pleural plaques, but who suffered no asbestos-related impairment. As Justice Breyer observed, "up to one-half of asbestos claims are now being filed by people who have little or no physical impairment. Many of these claims produce substantial payments (and substantial costs) even though a statistical majority of the individual litigants will never become impaired."
>
> In addition, mass screening programs have fostered huge numbers of claims by those who are unimpaired. As Judge Weinstein observed when presiding over the Johns-Manville bankruptcy: some plaintiffs' attorneys "have filed all of their cases without regard to the extent of injury . . . ."
>
> Many individuals file claims, despite their lack of impairment, based solely on the fear of future disease or to avoid statutes of limitation. As Dr. Louis Sullivan, the former Secretary of the Department of Health and Human Services, recently testified before Congress, these are "mass filings of cases on behalf of large groups of people who are not sick and may never become sick but who are compelled to file for remedial compensation simply because of state statutes of limitation."

App. 4-7.[2] In a footnote, the debtor cited *Eagle-Picher Indus., Inc. v. Am. Employers' Ins. Co.*, 718 F.Supp. 1053,

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[2] The relevant portion of Federal-Mogul's brief is included as an appendix to this brief.

1057 (D. Mass. 1989), for the proposition that "many of these cases result from mass x-ray screenings at occupational locations conducted by unions and/or plaintiffs' attorneys, and many claimants are functionally asymptomatic when suit is filed."

The natural supposition is that claims by persons with no impairment could and would be defeated in court, leaving the companies solvent and able to pay the claims of truly deserving plaintiffs. It is precisely mass consolidations such as this one, however, that prevent this result. The enormous, irresistible settlement pressure generated by these proceedings, and the lack of any ability to discover even the most basic facts of each case, is detailed by petitioners. The SAC respectfully urges the Court to grant certiorari because the cancer claimants are the ultimate losers: consolidations force defendants to pay exorbitant sums to settle cases involving no injury, thus inviting the filing of more unimpaired cases, thus causing another round of bankruptcies, and ultimately th[illegible] ensuring that cancer claimants are uncompensated.

The SAC does not believe that all consolidations of asbestos cases are unconstitutional. The West Virginia courts cannot be faulted for using innovative means to handle the tidal wave of pending asbestos claims. The Court should grant the petition for a writ of certiorari, however, because at some point – likely far short of a proceeding involving several thousand plaintiffs against 250 defendants – the case ceases to be a "trial" in any meaningful sense. As Judge Higginbotham put it over 12 years ago, in a much smaller asbestos consolidation, "[w]e are persuaded on reflection that the procedures here called for comprise something other than a trial within our authority. It is called a trial, but it is not." *In re Fibreboard*

Corp., 893 F.2d 706, 712 (5th Cir. 1990). What it is, today in West Virginia, is simply a vehicle by which meritless cases are forced to settlement.

The Court should therefore take this opportunity to establish minimal standards for due process in consolidated proceedings in asbestos litigation. The SAC respectfully looks forward to giving the Court the benefit of the perspective of asbestos cancer claimants on the merits of this important issue.

CONCLUSION

For the above reasons, *amicus curiae* Unofficial Committee of Select Asbestos Claimants requests that the petition for writ of certiorari be granted.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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FEDERAL-MOGUL GLOBAL INC., T&N LIMITED, et al.,	)	Case No. 01-10578 (___) (Jointly Administered)
Debtors.	)	

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* * *

mass of claims in an effective manner.[11] Since that report, the problem has only worsened. Indeed, the Supreme Court observed in 1999 that both the federal and state judicial systems were burdened by an "elephantine mass of asbestos cases" that "defies customary judicial administration." *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 821, 119 S. Ct. 2295, 2302 (1999).

A. Asbestos Claims Have Overwhelmed Both Federal and State Court Systems.

Untold tens of thousands of asbestos-related cases are now clogging state and federal courts.[12] As the Judicial Conference Committee observed, one of the "most objectionable aspects of asbestos litigation" is that "dockets in both federal and state courts continue to grow."[13] Prior to 1980, plaintiffs had filed approximately 950 asbestos cases in the federal district courts.[14] By 1985, 37,000 cases had

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[11] Report of the Judicial Conference Ad Hoc Committee on Asbestos Litigation 2 (Mar. 1991).

[12] *The Fairness in Asbestos Compensation Act of 1999: Legislative Hearing on H.R. 1283*, 106th Cong. at 3 (1999) (statement of Professor Christopher Edley, Jr., Harvard Law School). *See also Asbestos Companies Report Numbers of Pending Claims, New Filings in 1998*, 14 Mealey's Litig. Rep.: Asbestos 23-27 (May 7, 1999) (reporting 196,300 cases pending against Owens-Corning alone as of September 30, 1998).

[13] Report of the Judicial Conference Ad Hoc Committee on Asbestos Litigation 3 (Mar. 1991); *id.* at 7 ("The tide of asbestos personal injury and wrongful death litigation in federal and state courts in the 1970s and 1980s continues to rise unabated and has not begun to crest."). *See also Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 598 (1997) (quoting the Judicial Conference Report).

[14] Terence Dungworth, *Product Liability and the Business Sector: Litigation Trends in Federal Courts* 36 (Rand Inst. 1988).

been filed, a four-fold increase in the filing rate over the preceding five-year period.[15] Since then, the filings have continued to grow. Between 1994 and 1999, new claims against major asbestos producers averaged approximately 40,000 per year.[16]

To channel the unrelenting tide, attempts were made to consolidate claims and resolve them on a collective basis within the tort system. The process of aggregation, however, had unintended results. Aggregation allows the grouping of so-called unimpaired claimants with the impaired, which gives the so-called unimpaired "sympathy by association" in front of a jury.[17] As a result, aggregation "makes it more likely that a defendant will be found liable and results in significantly higher damage awards."[18] Aggregation therefore has increased the pressure to settle claims brought by individuals who have suffered no injury or who do not currently have significant impairment.[19] As

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[15] Deborah R. Hensler, *Asbestos Litigation in the United States: A Brief Overview* 3 (Rand Inst. 1991) (computations based on the federal statistical data base).

[16] *See The Fairness in Asbestos Compensation Act of 1999: Legislative Hearing on H.R. 1283*, 106th Cong. at 4 (1999) (statement of Dean Paul Verkuil, Cardozo School of Law) ("[L]awsuits continue to arrive at a rate of over 40,000 per year, and over 200,000 cases are now pending."); *id.* ("The rate of new filings and the growing number of pending cases vividly demonstrate a basic fact – the asbestos litigation problem is not getting better, it is getting worse.").

[17] *The Fairness in Asbestos Compensation Act of 1999: Legislative Hearing on H.R. 1283*, 106th Cong. at 6 (1999) (statement of Professor Christopher Edley, Jr., Harvard Law School).

[18] *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 746 (5th Cir. 1996).

[19] *See* Lester Brickman, *The Asbestos Litigation Crisis: Is There a Need for an Administrative Alternative?*, 13 Cardozo L. Rev. 1819, 1888 (1992) (observing that mass consolidations "accentuate the likelihood of

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a result the unimpaired are often compensated on the same basis as the impaired because the tort system has encouraged the "parasitic fusion of strong and weak cases."[20]

At least in part as a result of the aggregation of large numbers of impaired and so-called unimpaired claims, the tort system has encouraged additional filings. By 1992, 60-70% of new claims were being filed by individuals who had a "marker" of asbestos exposure, pleural plaques, but who suffered no asbestos-related impairment.[21] As Justice

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compensating the unimpaired" while leading to "higher verdicts per case than in the absence of consolidation" and "higher settlement values").

[20] John A. Siliciano, *Mass Torts and the Rhetoric of Crisis*, 80 Cornell L. Rev. 990, 1010 (1995). See also Deborah R. Hensler, *Fashioning a National Resolution of Asbestos Personal Injury Litigation: A Reply to Professor Brickman*, 13 Cardozo L. Rev. 1967, 1974 (1992) ("Cases with minor injuries, or no current impairment at all, are producing payments for some individuals while other individuals, with serious impairment or fatal illness, are unable to obtain timely compensation."); *The Fairness in Asbestos Compensation Act of 1999: Legislative Hearing on H.R. 1283*, 106th Cong. at 6 (1999) (statement of Professor Christopher Edley, Jr., Harvard Law School) (pointing to the jury award in *Cimino v. Raymark Industries*, 151 F.3d 297 (5th Cir. 1998), in which individuals with pleural plaques or "freckles" were award [sic] $558,900 and a mass consolidation in Mississippi in which unimpaired plaintiffs were awarded between $2 and $3.5 million as evidence that consolidation leads to the undesirable result of overcompensation of unimpaired plaintiffs at the expense of truly impaired plaintiffs).

[21] Lester Brickman, *The Asbestos Litigation Crisis: Is There a Need for an Administrative Alternative?*, 13 Cardozo L. Rev. 1819, 1853 (1992). Compounding the problem is the fact that pleural plaques are often misdiagnosed. *Id.* at 1852-53 ("Not infrequently the diagnosis of pleural plaque is erroneous."), citing Howard Frumkin, *et al., Radiologic Detection of Pleural Thickening*, 142 *Am. Rev. Respiratory Dis.*, 1325 (1990). *See also* Francis E. McGovern, *Resolving Mature Mass Tort*

(Continued on following page)

Breyer observed, "'up to one-half of asbestos claims are now being filed by people who have little or no physical impairment. Many of these claims produce substantial payments (and substantial costs) even though a statistical majority of the individual litigants will never become impaired.'"[22]

In addition, mass screening programs have fostered huge numbers of claims by those who are unimpaired.[23] As

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Litigation, 69 B.U. L. Rev. 659, 674 (1989) ("Significant variances also existed in the parties' medical data. For example, the defendants' medical experts had generally found that many plaintiffs suffered only from pleural plaques or thickening of pulmonary membranes through their analysis of radiographic evidence. Plaintiffs' doctors, however, often found interstitial fibrosis, a much more serious and advanced condition, from similar evidence.").

[22] Richard Doll & Julian Peto, *Asbestos: Effects on Health of Exposure to Asbestos* 2 (1985). *See also In re Asbestos Prods. Liab. Litig. (No. VI)*, No. Civ. A. No. MDL 875, 1996 WL 539589, at *1 (E.D. Pa. Sept. 16, 1996) ("Only a very small percentage of the cases filed have serious asbestos-related afflictions," and as a result they "are prone to be lost in the shuffle with pleural and other non-malignancy cases.").

[23] *Asbestos Litigation Crisis in Federal and State Courts: Hearings Before the Subcommittee on Intellectual Property and Judicial Administration of the House Committee on the Judiciary*, 102d Cong., 1st & 2d Sess. 77, 100 (Oct. 24, 1991) (testimony of Professor Lester Brickman) ("[P]leural plaque claims account for approximately 80% of new asbestos claim filings and represent a substantial percentage of previously filed claims. The existence of tens of thousands of such claims is accounted for by mass screenings of industrial workers financed by plaintiffs' lawyers and usually done with the active assistance of local union officials. Often, mobile x-ray vans brought to plant sites are used for the screenings."); Peter H. Schuck, *The Worst Should Go First: Deferral Registries in Asbestos Litigation*, 15 Harv. J.L. & Pub. Policy 541, 564 (1992) ("Another probable reason for the large number of unimpaired claims relates to the practice of some labor unions and plaintiffs' lawyers who engage in aggressive claim-solicitation campaigns on a mass basis designed to multiply the number

(Continued on following page)

Judge Weinstein observed when presiding over the Johns-Manville bankruptcy: some plaintiffs' attorneys "have filed all of their cases without regard to the extent of injury."[24] Even a prominent asbestos plaintiffs' attorney acknowledged in the early 1990s that: "[t]here are gross abuses of our system. We have lawyers who have absolutely no ethical concerns for their own clients that they represent – we have untrammeled screenings of marginally exposed people and the dumping of tens of thousands of cases in our court system, which is wrong [and] should be stopped."[25]

Many individuals file claims, despite their lack of impairment, based solely on the fear of future disease or to avoid statutes of limitation. As Dr. Louis Sullivan, the former Secretary of the Department of Health and Human Services, recently testified before Congress, there are "mass filings of cases on behalf of large groups of people who are not sick and may never become sick but who are

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of filed cases, thereby increasing the pressure on defendants to settle cases wholesale.").

[24] *See also Eagle-Picher Indus., Inc. v. Am. Employers' Ins. Co.*, 718 F. Supp. 1053, 1057 (D. Mass. 1989) ("[M]any of these cases result form mass X-ray screenings at occupational locations conducted by unions and/or plaintiffs' attorneys, and many claimants are functionally asymptomatic when suit is filed. Moreover, many diagnoses are made by physicians not well schooled in the American Thoracic Society's criteria for the diagnosis of asbestosis, and the medical literature does not provide standards for judging the diagnosability of asbestos-related disease.").

[25] *An Administrative Alternative to Tort Litigation to Resolve Asbestos Claims*, Transcript of the Administrative Conference of the United States 15 (Oct. 31, 1991) (remarks of Ronald L. Motley).

compelled to file for remedial compensation simply because of state statutes of limitation."[26]

Finally, large numbers of claims are generated based on questionable diagnostic techniques. Thus, for instance, the late Judge Carl Rubin appointed his own medical experts to evaluate claimants in 65 pending asbestos cases. Although all the plaintiffs claimed some asbestos-related condition, the court-appointed experts found that in fact only 15% had asbestosis, 20% had pleural plaques, and 65% had no asbestos-related condition whatsoever.[27]

In another example, a United States district judge in Kansas found that medical screeners departed from accepted medical standards by diagnosing asbestos-related "injuries" that failed to meet minimum American Thoracic Society diagnostic criteria. As a result the court concluded that "many, if not most" of the cases were "without merit." Overall, the court found that screening programs in the *Raymark* case produced a "steady flow of faulty claims." *See Raymark Indus., Inc. v. Stemple*, 1990 WL 72588, at *2, *8, *19, *29 (D. Kan. 1990); *see also In re Haw. Fed. Asbestos Cases*, 734 F. Supp. 1563, 1566 (D. Haw. 1990)

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[26] *The Fairness in Asbestos Compensation Act of 1999: Legislative Hearing on H.R. 1283*, 106th Cong. at 4 (1999) (statement of Louis W. Sullivan, M.D., Immediate Past Secretary, Department of Health and Human Services). *See also* John A. Siliciano, *Mass Torts and the Rhetoric of Crisis*, 80 Cornell L. Rev. 990, 1011 (1995) ("[P]erhaps anticipating the impact of statutes of limitation and the single judgment rule on [asbestos] claims should harm materialize in the future, or perhaps bewitched by the idea of recovery for the mere fear of future illness, courts left the gate open and the caseloads surged.").

[27] Carl B. Rubin & Laura Ringenbach, *The Use of Court Experts in Asbestos Litigation*, 137 F.R.D. 35 (1991).

(cases are often diagnosed based on "subjective declarations of shortness of breath, tiredness and general lassitude," rather than objectively observable clinical findings).

In summary, despite the fact that any meaningful workplace exposure to asbestos long ago ceased, the flow of cases continues unabated. The "sheer number of asbestos cases" has led to several "distort[ions of] the traditional process" for resolving tort claims.[28]

B. The Bankruptcy System Is the Only Available Means for the Rational Adjudication and Resolution of the Asbestos Claims.

Judges and attorneys have proposed collective settlement of asbestos claims within the tort system, using class-action mechanisms. These approaches, however, have not survived appellate review. As discussed below, in two recent cases the Supreme Court blocked class-action settlements. Similarly, while a number of proposals for legislative solutions have

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[28] Report of the Advisory Committee on Civil Rules and the Working Group on Mass Torts to the Judicial Conference of the United States 23 (Feb. 25, 1999).